IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1194 of 1990

For Approval and Signature:

HONOURABLE MR.JUSTICE J.M.PANCHAL
HON'BLE SMT. JUSTICE ABHILASHA KUMARI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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PATEL BECHARBHAI - Petitioner(s)
Versus
STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :
UNSERVED-EXPIRED (N) for Petitioner(s) : 1,
MS MINI NAIR AGP for Respondent(s) : 1, 3,
RULE SERVED for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE J.M.PANCHAL

and

HON'BLE SMT. JUSTICE ABHILASHA KUMARI

Date : 05/04/2007

ORAL JUDGMENT
(Per : HONOURABLE MR.JUSTICE J.M.PANCHAL)

1. By filing the instant petition under Article 226 of the Constitution, the petitioner i.e. Mr. Becharbhai Patel who was Proprietor of Prakash Cinema situated at village Ras, Taluka:Borsad, District: Kheda has prayed to direct the respondents to grant him permission to pay the consolidated tax under section 6 of the Gujarat Entertainment Tax Act, 1977 as amended by Act No.10 of 1989.

2. The petition was placed for admission hearing before the Court on February 20, 1990 and after hearing the learned Counsel for the petitioner rule was issued. It may be mentioned that the petitioner had engaged late Mr.Sharad R.Shah as his counsel in the matter. During the pendency of the petition Mr.Sharad R.Shah expired and, therefore, notice was issued to the petitioner calling upon him to engage another lawyer or to appear in person to prosecute the petition. The endorsement on the board indicates

that the notice issued to the petitioner could not be served as he is reported to have expired.

3. Mr.Bhikhubhai Bhaijibhai Tadvi, who was then discharging the duties as Prescribed Officer, Borsad has filed affidavit-in-reply on behalf of the respondent No.3 in the month of March, 2006. In the said affidavit-in-reply, it is stated that though earlier prayer made by the petitioner to permit him to pay consolidated tax was rejected, the petitioner was permitted to pay consolidated tax by order dated July 10, 1992. In support of this averment, Mr.Tadvi has produced a copy of order dated July 10, 1992 as Annexure R1 with his reply. It is further averred by Mr.Tadvi that in view of the order dated July 10, 1992 the petition has become infructuous and as no recovery on the part of the State of Taxes is pending the petition be disposed of as having become infructuous.

4. This Court has heard Ms. Mini Nair, learned Assistant Government Pleader for the respondents. In view of the order dated July 10, 1992 which is

produced along with the affidavit-in-reply filed by Mr.Tadvi, this Court is of the opinion that the petition has become infructuous in as much as the petitioner was permitted to pay consolidated tax. Therefore, the petition deserves to be disposed of accordingly.

5. For the foregoing reasons, the petition fails. Rule is discharged. There shall be no order as to costs. The petition stands disposed of as having become infructuous.

[J.M.PANCHAL, J.]

[ABHILASHA KUMARI, J.]

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